REMARKS

I.   STATUS OF THE CLAIMS

Claims 7 and 8 are cancelled herein.

New claim 11 is added. Support for the claim is found, for example, on page 10, lines 4-20, of the application.

In view of the above, claims 1-6 and 9-11 are currently pending.

II.   CLAIM OBJECTIONS

Claims 4, 5 and 9 were amended to overcome the rejection in the previous Amendment. Claim 7 is cancelled.

III. CLAIMS 7 AND 8 ARE REJECTED UNDER 35 U.S.C. § 101 AS BEING DIRECTED TO NON-STATUTORY SUBJECT MATTER

Claims 7 and 8 are cancelled herein.

IV. CLAIMS 1-10 ARE REJECTED UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER TOSHIYA ET AL. (JAPANESE PUBLICATION NO. 2001-273375) IN VIEW OF FUNK ET AL. (U.S. PATENT NO. 5,937,162)

Claim 1 recites recording a reception time at which the server receives the response corresponding to the examinee ID and determining, based on a time period from the transmission of the inquiry to the reception of the response corresponding to the examinee ID, a transmission order in which a pass/fail information address in the network at which the pass/fail information is located is transmitted to the examinee terminal. Claims 5 and 9 recite somewhat similar features. The Applicant respectfully submits that the cited art fails to teach the above features.

The Examiner provided a machine translation of Toshiya with the Office Action mailed November 29, 2006. It is upon this machine translation that the majority of the 35 U.S.C. § 103(a) rejection is based. The outstanding Office Action states on pages 2 and 3:

> Note that the system is providing the results based on users responding to system emails. Thus, the response order is automatically based on the user's response time, because the system sends the user an email, to which the user responds to get the information. Since the reply to the system leads directly to the pass/fail information, the user's response is thus what determines the transmission order of the location of the pass/fail result.

The Advisory Action further states on page 2 that "a respnse [sic] order based on reception time" is "implicit in the system of Toshiya as a whole, because the results are transmitted immediately when the process is carried out ... on a first come first serve basis." Paragraphs [0017]-[0020] of Toshiya were cited in support of this assertion.

Toshiya discusses that:

> [T]he success-or-failure information transceiver system of this invention judged success or failure with reference to the aforementioned user information and the aforementioned success-or-failure information database 4 which were inputted, and is equipped with the information transmitting program 7 which transmits the judged information to a user's terminal.

Paragraph [0020], of Toshiya. Per the above, Toshiya discusses that an information transmitting program transmits judged information to a user's terminal. However, there is nothing cited or found in Toshiya that teaches recording a reception time for a response e-mail and determining a time period from the transmission of the inquiry to the reception of the response corresponding to the examinee ID. In fact, the word "time" does not appear in the cited sections of Toshiya. Further, no information is provided as to how the server in Toshiya responds to requests. Toshiya merely allows a user to designate recipients to receive pass/fail information. As such, the Advisory Action's assertion that Toshiya operates on a "first come first serve basis" is conclusory with no textual support in the record.

The Applicant also submits that the application of Official Notice is improper in this case. The circumstances in which official notice may be relied upon "should be rare when an application is under final rejection or action under 37 CFR 1.113." See MPEP § 2144.03(A). "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of *instant and unquestionable* demonstration as being well-known." *Id.* The Applicant respectfully submits that recording a reception time at which the server receives the response is not a limitation of such instant and unquestionable demonstration. Further, MPEP § 2144.03(B) states that "[i]f such notice is taken, the basis for such reasoning must be set forth explicitly. The Examiner must provide *specific factual findings* predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge." In this case, the Examiner has merely stated that "time stamping of emails is old and well known in the art", without providing more. No support for this assertion is provided. Thus, the application of Official Notice in this case is improper.

Claim 1 also recites monitoring server load of the server and transmitting the pass/fail information address to examinee terminals of a predetermined number of examinees including the examinee depending on the determined transmission order and the monitored server load. Claims 5, 7 and 9 recite somewhat similar features. The Applicant respectfully submits that the cited art fails to teach the above features.

Funk relates to a method and apparatus for high volume e-mail delivery and describes an outbound email processing section 712, shown in FIGS. 7 and 9, which may be scaled to dynamically increase email throughput. See column 13, lines 48-53, of Funk. More specifically, Funk states that based on message load, additional queues or processors may be quickly brought online. See column 13, lines 48-51, of Funk. If the message load input (step 1102) is determined to be too high (step 1104), an additional queue is added (step 1106). See column 13, lines 56-58.

The Advisory Action states that "[s]ince applicant has only claimed wherein the results are transmitted based on server load without claiming additional details, Funk cures this deficiency as the nature of the transmissions are based on the server load." See page 2, of the Advisory Action. However, claim 1 recites *transmitting* the pass/fail information address to examinee terminals of a predetermined number of examinees including the examinee depending on the determined transmission order and the monitored server load. Funk does not transmit *based on* a monitored server load. Rather, per the above, Funk dynamically scales to increase e-mail throughput by bringing additional queues or processors online. Thus, Toshiya and Funk, both individually and in combination, fail to render claim 1 unpatentable under 35 U.S.C. § 103(a).

Although the above comments are specifically directed to claim 1, it is respectfully submitted that the comments would be helpful in understanding various differences of various other claims over the cited art.

Claim 3 recites transmitting, in response to reception of the transmission request, examinee ID numbers of a plurality of passing examinees around the particular examinee. The Applicant respectfully submits that the cited art fails to teach this feature.

The Office Action states that paragraph [0026] of Toshiya discloses this feature, without providing more. No teaching or suggestion of transmitting examinee ID numbers of a plurality of passing examinees around the particular examinee is found in the cited section of Toshiya. Thus, it is respectfully submitted that claim 3 patentably distinguishes over the cited art. If the

Examiner maintains his rejection, the Applicant respectfully requests that the Examiner provide specific quotations and reasoning from Toshiya in support thereof.

Claim 4 recites forming a group of examinees who wish to disclose their pass/fail information to other examinees, based on profile information of the examinees, the group including the particular examinee. The Applicant respectfully submits that the cited art fails to teach this feature.

The Advisory Action states on page 2 that:

> It is described in paragraph 26 how examinees can build a profile beforehand that is stored in a user information database that comprises email addresses of others to be informed of the results. Examiner interprets the collection of individuals to notify as a "group" of individuals to notify.

Toshiya discusses "transmitting means to transmit information ... to a third person's terminal using an electronic mail." See paragraph [0026], of Toshiya. Successful candidates can input "the mail address of the partner whom a user wants to tell about the result ... and the approach of transmitting is raised." Toshiya discusses transmitting an e-mail to a *partner* after a user inputs the e-mail address thereof, not a "collection of individuals" as asserted in the Advisory Action. A "group" is simply not taught in the machine translation of Toshiya. Additionally, nowhere does Toshiya teach forming a group of examinees *based on profile information of the examinees*, the group *including* the particular examinee. Nothing is cited or found in Funk that teaches this feature. Thus, claim 4 patentably distinguishes over the cited art.

In view of the above, it is respectfully submitted the rejection is overcome.

V. NEW CLAIM

New claim 11 is added herein. Claim 11 recites if the server load is greater than a predetermined value, the server does not transmit pass/fail information to the examinee terminal until a predetermined period of time has passed. As discussed above, Funk dynamically scales to increase e-mail throughput by bringing additional queues or processors online. Funk is silent as to not transmitting information until a predetermined time period has passed. Toshiya also fails to teach this feature. Thus, it is respectfully submitted that claim 11 also patentably distinguishes over the cited art.

VI. CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.
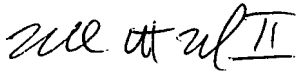
Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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